

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15204 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BHIMJI @ BHIMO BHIKHABHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15204 of 2003
MS SUBHADRA G PATEL for Petitioner No. 1
Ms P B Sheth, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 23/03/2004

ORAL JUDGEMENT

The petitioner-detenu has preferred this petition
under Article 226 of the Constitution of India for

appropriate writ, order or direction for quashing and setting aside an order dated 29.9.2003 passed by respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the ground that nine offences were registered against the petitioner during the period from 20.6.2003 to 14.8.2003 and two unnamed witnesses had given statement against the petitioner stating that the petitioner was guilty of violating 'public order'. The petitioner was arrested on the date of the order itself and he is under detention since then. The petitioner has challenged the aforesaid order of detention on various grounds. It has been contended that the petitioner has not committed any violation of public order and that the order has been passed against the petitioner without proper application of mind. That therefore, the order of detention is illegal and deserves to be set aside. The petitioner has, therefore, prayed that the impugned order of detention be set aside and the petitioner may be set at liberty forthwith.

2. On receiving the petition, rule was issued and in response to the service of notice of rule, Ms. P B Sheth, learned AGP has appeared. She has also submitted affidavit of the detaining officer which is taken on record. At the stage of final hearing, learned Advocate for the petitioner has argued that though nine offences have been registered against the petitioner during the period from July 2002 to August 2003, and though two unnamed persons appear to have given some statements against the petitioner, the petitioner is not shown to be a person who could be treated to be a dangerous person or a person who has committed violation of public order and, therefore, the detaining authority ought not to have passed the order in question directing his detention in terms of the said order.

3. On going through the detention order dated 29.9.2003 placed at page no.15, it is found that nine offences have been registered against the petitioner during the aforesaid period. They all related to the offences punishable under section 379 read with 114, 411 etc.

4. As per the case of the detaining authority, the petitioner was ordered to be detained by the impugned order on account of the fact that 9 cases under section 379 read with section 411 of IPC were registered against the petitioner and couple of witnesses had tendered their statements to the police which were verified by the detaining authority. On the strength of the above

material, the detaining authority found that the petitioner was a dangerous person and, therefore, with a view to prevent him from continuing the illegal activities, he was required to be detained. Accordingly, on subjective satisfaction with respect to the materials before him, the second respondent had passed the impugned order for detention of the petitioner. One of the grounds on which the petitioner has challenged this petition is that as per the grounds provided for the detention of the petitioner, the petitioner was on bail in respect of the offences at sr.no.1,5,6,7,8 and 9. It has also mentioned therein that so far as offences at sr.no.2,3, and 4 are concerned, the petitioner was in judicial custody and he was likely to apply for bail and, therefore, he is likely to get himself released on bail. Learned Advocate for the petitioner has contended that in fact the petitioner was on bail in the last three offences and, therefore, there was clear non-application of mind and, therefore, the order of detention is illegal. The petitioner, has therefore, prayed that the detention order against the petitioner may be quashed and set aside and the petitioner may be released forthwith.

5. Learned Advocate for the petitioner has contended that as per the detaining authority, the petitioner was in judicial custody in respect of the offences mentioned at sr.no.2,3, and 4 of the grounds mentioned at page no.15. These are the three offences being CR.No.77, 80 and 85 of 2003 registered on 24.6.2003, 7.7.2003 and 23.7.2003 respectively. They were registered before Kotda Sanghani police station for the aforesaid offences. Learned Advocate for the petitioner has produced copies of the bail order in this respect. They are taken on record. On going through the application for bail, the order passed by the trial court granting bail and the other documents including bail bonds, it transpires that the petitioner was on bail in the aforesaid matters. So the detaining authority has considered the petitioner to be in judicial custody in those three matters and on factual verification, it is found that the petitioner had already been on bail in the aforesaid three matters. This would show that either the material placed before the detaining authority was not correct, or the detaining authority did not apply his mind to the materials placed before the detaining authority. Any way, in view of the non-application of mind, the impugned order cannot be sustained. This shows that the order of detention of the petitioner is not legal and valid and, therefore, it is required to be quashed and set aside.

6. For the foregoing reasons, this petition is

allowed. The impugned order dated 29.9.2003 passed by respondent No.2 in exercise of powers under section 3(2) of the PASA Act detaining the present petitioner, is ordered to be set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J]

msp